

**Introduced by Senator Bowen**

February 21, 2003

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An act to amend Sections 352 and 372 of, ~~to amend and renumber Section 454.1 of, to add Section 345.3 to, to repeal Sections 346, 348, and 350 of, and to repeal Article 2 (commencing with Section 334), to add Section 345.3 to, to repeal Section 350 of, to repeal Article 4 (commencing with Section 355), and Article 5 (commencing with Section 359) of Chapter 2.3 of Part 1 of,~~ *and to repeal and add Article 2 (commencing with Section 334) of Chapter 2.3 of Part 1 of,* the Public Utilities Code, relating to public utilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 920, as amended, Bowen. Electricity Oversight Board: Independent System Operator: Power Exchange.

(1) The existing restructuring of the electrical services industry within the Public Utilities Act provides for the establishment of an Independent System Operator *ISO* and a Power Exchange as separately incorporated public benefit nonprofit corporations. An Electricity Oversight Board (Oversight Board) is also established to oversee the ~~Independent System Operator~~ *ISO* and the Power Exchange in order to ensure the success of electric industry restructuring and to ensure a reliable supply of electricity in the transition to a new market structure. Pursuant to an order of the Federal Energy Regulatory Commission, the Power Exchange has ceased to function. The Oversight Board is granted various powers including, but not limited to, requiring the revision of the bylaws of the ~~Independent System Operator~~ *ISO* and the approval of the entry of the ~~Independent System Operator~~ *ISO* into a

multistate entity or a regional organization. Existing law requires the ~~Independent System Operator ISO~~ to adopt certain inspection, maintenance, repair, and replacement standards for the transmission facilities under its control and to make a related report to the Oversight Board. Existing law authorizes the ~~Independent System Operator ISO~~ and the Power Exchange to enter into a regional compact or other comparable agreement to become western states regional organizations.

This bill would repeal those provisions establishing, and granting powers to, the Oversight Board, *would transfer the existing powers and responsibilities of the Oversight Board to the Attorney General*, and would make certain conforming changes to existing law. The bill would require the ~~Independent System Operator ISO~~ to revise its own bylaws, would require the Legislature to approve the entry of the ~~Independent System Operator ISO~~ into a multistate entity or a regional organization, and would ~~repeal that provision regarding the adoption of standards for transmission facilities~~ *provide that the corporate powers of directors of the ISO under state law, may only be exercised by members of the independent governing board appointed under state law*. Because any violation of the Public Utilities Act is a crime, the bill, by establishing new duties for the ~~Independent System Operator ISO~~, would impose a state-mandated local program by changing the definition of a crime. The bill would repeal certain provisions relating to the Power Exchange. The bill would repeal the regional compact provision.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Article 2 (commencing with Section 334) of
- 2 Chapter 2.3 of Part 1 of the Public Utilities Code is repealed.
- 3 SEC. 2. Article 2 (commencing with Section 334) is added to
- 4 Chapter 2.3 of Part 1 of the Public Utilities Code, to read:
- 5

1     Article 2.   *Transfer of Oversight Board Responsibilities and*  
2                                     *Powers*  
3

4     334.   (a) *It is the intent of the Legislature to abolish the*  
5     *Electricity Oversight Board as an agency of the state and to*  
6     *preserve the state's interest in any legal or regulatory proceeding*  
7     *where the Electricity Oversight Board is a party, by transferring*  
8     *the state's interests to the Attorney General.*

9     (b) *Any reference in any code to the Electricity Oversight Board*  
10    *shall be deemed to refer to the Attorney General. Notwithstanding*  
11    *any other provision of law, the Attorney General succeeds to, and*  
12    *is vested with, all the duties, powers, purposes, responsibilities,*  
13    *and jurisdiction of the Electricity Oversight Board, and may*  
14    *exercise, all rights, claims, powers or entitlements of the*  
15    *Electricity Oversight Board in any legal or regulatory proceeding,*  
16    *contract, settlement, tariff, bylaw, or article of incorporation. The*  
17    *Attorney General may initiate, pursue to final conclusion or settle*  
18    *any claim of the Electricity Oversight Board.*

19    335.   *This article shall be liberally construed to preserve any*  
20    *claims and jurisdiction of the state and to carry out the intent of*  
21    *this article.*

22    SEC. 3.   Section 345.3 is added to the Public Utilities Code, to  
23    read:

24    345.3. (a) The Independent System Operator governing  
25    board shall be composed of a five-member independent governing  
26    board of directors appointed by the Governor and subject to  
27    confirmation by the Senate. Any reference in this chapter or in any  
28    other provision of law to the Independent System Operator  
29    governing board means the independent governing board  
30    appointed under this subdivision.

31    (b) A member of the independent governing board appointed  
32    under subdivision (a) may not be affiliated with any actual or  
33    potential participant in any market administered by the  
34    Independent System Operator.

35    (c) (1) All appointments shall be for three-year terms.

36    (2) There is no limit on the number of terms that may be served  
37    by any member.

38    (d) The Independent System Operator shall revise its articles of  
39    incorporation and bylaws in accordance with this section, and shall

1 make filings with the Federal Energy Regulatory Commission as  
2 it determines to be necessary.

3 (e) For the purposes of the initial appointments to the  
4 Independent System Operator governing board, as provided in  
5 subdivision (a), the Governor shall appoint one member to a  
6 one-year term, two members to a two-year term, and two members  
7 to a three-year term.

8 (f) *The corporate powers of directors of the Independent*  
9 *System Operator under the Corporations Code, may only be*  
10 *exercised by members of the independent governing board*  
11 *appointed pursuant to this section.*

12 ~~SEC. 3. Section 346 of the Public Utilities Code is repealed.~~

13 ~~SEC. 4. Section 348 of the Public Utilities Code is repealed.~~

14 ~~SEC. 5.—~~

15 ~~SEC. 4.~~ Section 350 of the Public Utilities Code is repealed.

16 ~~SEC. 6.—~~

17 ~~SEC. 5.~~ Section 352 of the Public Utilities Code is amended  
18 to read:

19 352. The Independent System Operator may not enter into a  
20 multistate entity or a regional organization unless that entry is  
21 approved by the Legislature.

22 ~~SEC. 7.—~~

23 ~~SEC. 6.~~ Article 4 (commencing with Section 355) of Chapter  
24 2.3 of Part 1 of the Public Utilities Code is repealed.

25 ~~SEC. 8.—~~

26 ~~SEC. 7.~~ Article 5 (commencing with Section 359), of Chapter  
27 2.3 of Part 1 of the Public Utilities Code is repealed.

28 ~~SEC. 9.—~~

29 ~~SEC. 8.~~ Section 372 of the Public Utilities Code is amended  
30 to read:

31 372. (a) It is the policy of the state to encourage and support  
32 the development of cogeneration as an efficient, environmentally  
33 beneficial, competitive energy resource that will enhance the  
34 reliability of local generation supply, and promote local business  
35 growth. Subject to the specific conditions provided in this section,  
36 the commission shall determine the applicability to customers of  
37 uneconomic costs as specified in Sections 367, 368, 375, and 376.  
38 Consistent with this state policy, the commission shall provide that  
39 these costs shall not apply to any of the following:

1 (1) To load served onsite or under an over the fence  
2 arrangement by a nonmobile self-cogeneration or cogeneration  
3 facility that was operational on or before December 20, 1995, or  
4 by increases in the capacity of such a facility to the extent that ~~such~~  
5 *the* increased capacity was constructed by an entity holding an  
6 ownership interest in or operating the facility and does not exceed  
7 120 percent of the installed capacity as of December 20, 1995,  
8 provided that prior to June 30, 2000, the costs shall apply to over  
9 the fence arrangements entered into after December 20, 1995,  
10 between unaffiliated parties. For the purposes of this subdivision,  
11 “affiliated” means any person or entity that directly, or indirectly  
12 through one or more intermediaries, controls, is controlled by, or  
13 is under common ~~on control with~~ *control with*, another specified  
14 entity. “Control” means either of the following:

15 (A) The possession, directly or indirectly, of the power to direct  
16 or to cause the direction of the management or policies of a person  
17 or entity, whether through an ownership, beneficial, contractual,  
18 or equitable interest.

19 (B) Direct or indirect ownership of at least 25 percent of an  
20 entity, whether through an ownership, beneficial or equitable  
21 interest.

22 (2) To load served by onsite or under an over the fence  
23 arrangement by a nonmobile self-cogeneration or cogeneration  
24 facility for which the customer was committed to construction as  
25 of December 20, 1995, provided that the facility was substantially  
26 operational on or before January 1, 1998, or by increases in the  
27 capacity of ~~such a~~ *the* facility to the extent that the increased  
28 capacity was constructed by an entity holding an ownership  
29 interest in or operating the facility and does not exceed 120 percent  
30 of the installed capacity as of January 1, 1998, provided that prior  
31 to June 30, 2000, the costs shall apply to over the fence  
32 arrangements entered into after December 20, 1995, between  
33 unaffiliated parties.

34 (3) To load served by existing, new, or portable emergency  
35 generation equipment used to serve the customer’s load  
36 requirements during periods when utility service is unavailable,  
37 provided ~~such that~~ emergency generation is not operated in  
38 parallel with the integrated electric grid, except on a momentary  
39 parallel basis.

1 (4) After June 30, 2000, to any load served onsite or under an  
2 over the fence arrangement by any nonmobile self-cogeneration or  
3 cogeneration facility.

4 (b) Further, consistent with state policy, with respect to  
5 self-cogeneration or cogeneration deferral agreements, the  
6 commission shall do the following:

7 (1) Provide that a utility shall execute a final self-cogeneration  
8 or cogeneration deferral agreement with any customer that, on or  
9 before December 20, 1995, had executed a letter of intent (or  
10 similar documentation) to enter into the agreement with the utility,  
11 provided that the final agreement shall be consistent with the terms  
12 and conditions set forth in the letter of intent and the commission  
13 shall review and approve the final agreement.

14 (2) Provide that a customer that holds a self-cogeneration or  
15 cogeneration deferral agreement that was in place on or before  
16 December 20, 1995, or that was executed pursuant to paragraph (1)  
17 in the event the agreement expires, or is terminated, may do any  
18 of the following:

19 (A) Continue through December 31, 2001, to receive utility  
20 service at the rate and under terms and conditions applicable to the  
21 customer under the deferral agreement that, as executed, includes  
22 an allocation of uneconomic costs consistent with subdivision (e)  
23 of Section 367.

24 (B) Engage in a direct transaction for the purchase of electricity  
25 and pay uneconomic costs consistent with Sections 367, 368, 375,  
26 and 376.

27 (C) Construct a self-cogeneration or cogeneration facility of  
28 approximately the same capacity as the facility previously  
29 deferred, provided that the costs provided in Sections 367, 368,  
30 375, and 376 shall apply consistent with subdivision (e) of Section  
31 367, unless otherwise authorized by the commission pursuant to  
32 subdivision (c).

33 (3) Subject to the fire wall described in subdivision (e) of  
34 Section 367 provide that the ratemaking treatment for  
35 self-cogeneration or cogeneration deferral agreements executed  
36 prior to December 20, 1995, or executed pursuant to paragraph (1)  
37 shall be consistent with the ratemaking treatment for the contracts  
38 approved before January 1995.



(c) The commission shall authorize, within 60 days of the receipt of a joint application from the serving utility and one or more interested parties, applicability conditions as follows:

(1) The costs identified in Sections 367, 368, 375, and 376 shall not, prior to June 30, 2000, apply to load served onsite by a nonmobile self-cogeneration or cogeneration facility that became operational on or after December 20, 1995.

(2) The costs identified in Sections 367, 368, 375, and 376 shall not, prior to June 30, 2000, apply to any load served under over the fence arrangements entered into after December 20, 1995, between unaffiliated entities.

(d) For the purposes of this subdivision, all onsite or over the fence arrangements shall be consistent with Section 218 as it existed on December 20, 1995.

(e) To facilitate the development of new microcogeneration applications, electrical corporations may apply to the commission for a financing order to finance the transition costs to be recovered from customers employing the applications.

(f) To encourage the continued development, installation, and interconnection of clean and efficient self-generation and cogeneration resources, to improve system reliability for consumers by retaining existing generation and encouraging new generation to connect to the electric grid, and to increase self-sufficiency of consumers of electricity through the deployment of self-generation and cogeneration, both of the following shall occur:

(1) The commission shall determine if any policy or action undertaken by the Independent System Operator, directly or indirectly, unreasonably discourages the connection of existing self-generation or cogeneration or new self-generation or cogeneration to the grid.

(2) If the commission ~~find~~ *finds* that any policy or action of the Independent System Operator unreasonably discourages, the connection of existing self-generation or cogeneration or new self-generation or cogeneration to the grid, the commission shall undertake all necessary efforts to revise, mitigate, or eliminate that policy or action of the Independent System Operator.

~~SEC. 10. Section 454.1 of the Public Utilities Code, as added by Chapter 1040 of the Statutes of 2000, is amended and renumbered to read:~~



~~454.6. (a) Reasonable expenditures by transmission owners that are electrical corporations to plan, design, and engineer reconfiguration, replacement, or expansion of transmission facilities are in the public interest and are deemed prudent if made for the purpose of facilitating competition in electric generation markets, ensuring open access and comparable service, or maintaining or enhancing reliability, whether or not these expenditures are for transmission facilities that become operational.~~

~~(b) The commission shall facilitate the efforts of the state's transmission owning electrical corporations to obtain authorization from the Federal Energy Regulatory Commission to recover reasonable expenditures made for the purposes stated in subdivision (a).~~

~~(c) Nothing in this section alters or affects the recovery of the reasonable costs of other electric facilities in rates pursuant to the commission's existing ratemaking authority under this code or pursuant to the Federal Power Act (41 Stat. 1063; 16 U.S.C. Secs. 791a, et seq.). The commission may periodically review and adjust depreciation schedules and rates authorized for an electric plant that is under the jurisdiction of the commission and owned by electrical corporations and periodically review and adjust depreciation schedules and rates authorized for a gas plant that is under the jurisdiction of the commission and owned by gas corporations, consistent with this code.~~

~~SEC. 11.—~~

~~SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.~~

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